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January 18, 2012

VIA E-FILE

The Honorable Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E. Street, S.W., Room #100
Washington, DC 20423-0001

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Office of Proceedings

JAN 18 2012

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RESPONSE

**Re: Docket No. AB-33 (Sub No. 277X), Union Pacific Railroad Company –
Abandonment Exemption – In Lafourche Parish, LA**

**Docket No. AB-318 (Sub No. 7X), Louisiana & Delta Railroad, Inc. –
Discontinuance of Service Exemption – In Lafourche Parish, LA**

Dear Ms. Brown:

Union Pacific Railroad Company ("Union Pacific") respectfully responds to the filing made on behalf of Valentine, LLC ("Valentine") by Thomas McFarland, P.C., dated December 29, 2011 and the filing made on behalf of BNSF Railway Company, dated January 6, 2012 by Courtney Biery Estes, General Attorney, for BNSF Railway Company ("BNSF").

Valentine's argument that it is settled law that a rail carrier who owns a rail line cannot lawfully abandon the rail line where another rail carrier ("Carrier2") would continue to be authorized to operate over the rail line is correct with regard to Carrier2's that have a property interest such as a lease or at minimum a trackage-rights agreement with regard to the rail line. In *Thompson v. Texas Mexican Ry. Co.*, 328 U.S. 134, 144-145 (1946) and *Illinois Central Gulf R. Co.-Abandonment*, 360 I.C.C. 104 (1978), the Carrier2 protesting the abandonment had either a property interest in or trackage rights on or over the rail line that the Board or its predecessor, the Interstate Commerce Commission had approved said Carrier2's operation on or over. In this matter, the BNSF has neither an ownership nor leasehold interest in nor trackage rights on or over the subject line (the "Lockport Branch"). BNSF's statement in the penultimate paragraph in its January 6, 2012 filing, is correct.¹ However, in the current matter, Union Pacific is not

¹ It is well settled that the landlord railroad may not consummate its abandonment until all tenant railroads have discontinued their operations regardless of whether the tenant carriers are actively serving customers on the line. See, e.g., STB Docket No. AB-57 (Sub-No. 56X), *Soo Line Railroad Company d/b/a Canadian Pacific Railway Company – Abandonment Exemption – In Bottineau, Rolette, and Towner Counties, ND* (not printed), served January 10, 2010; STB Docket No. AB-55 (Sub-No. 552X) *CSX Transportation, Inc. – Abandonment Exemption – In Raleigh County, WV* (not printed) served November 25, 1998; Docket No. AB-33 (Sub-No. 77X), *Union Pacific Railroad Company – Abandonment Exemption – In Solano County, CA* (not printed), served December 15, 1992.



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BNSF's landlord and BNSF is not Union Pacific's tenant with regard to the Lockport Branch. To grant BNSF's request would work as a forfeiture of Union Pacific's property interest in the Lockport Branch. As stated in Union Pacific's response in this matter dated December 23, 2011, BNSF has an appropriate and proper remedy under the applicable provisions of the Code of Federal Regulations relating to abandonments of railroad operating property. See, 49 C.F.R. 1152.27(c) Submission of Financial Assistance Offer.

There are many examples where Carrier2's have received common carrier authority from the Board to operate on a rail line of railroad which is never utilized because the parties failed to reach final agreement for the sale or lease of the rail line or trackage rights on or over the rail line. In fact, in this matter, the Lockport Lease by LDRR of the Lockport Branch referenced in *Louisiana & Delta Railroad, Inc. – Acquisition, Operation, Lease and Trackage Rights – Southern Pacific Transportation Company*, Finance Docket No. 30958 (ICC served January 22, 1987) (Not printed but see 52 FR 2465, January 22, 1987.) was not executed until January 17, 1992 almost five (5) years after the Notice of Exemption of January 22, 1987 was filed with the ICC.

The response filed by BNSF on January 6, 2012 verifies that BNSF does not claim an ownership interest in the Lockport Branch. Further, BNSF affirms that its rights to serve customers on the 50/50 Line and the branches (which includes the Lockport Branch) are subject to the existing rights of other railroads. However, BNSF claims that its rights are not subservient to those prior rights.

Without the necessary interest in land (sale or lease) or contractual right to occupy (trackage rights agreement), the Board authority to operate on a rail line as a common carrier cannot be lawfully consummated. Clearly, BNSF is not arguing that it has a real property interest (sale or leasehold) in the Lockport Branch. BNSF confirms this position in the second paragraph of BNSF's January 6, 2012 response to the Board. Second, BNSF confirms in the third paragraph of BNSF's January 6, 2012 response that BNSF's rights to serve customers on Lockport Branch are subject to the existing rights of other railroads, in this case, LDRR.² LDRR's rights are not only prior in time to BNSF's rights but exclusive for the term of the Lockport Lease and remain exclusive for the 1.7 mile Remaining Segment (as herein after defined) still covered by the Lockport Lease and related option to purchase. Finally, BNSF clearly does not claim it has trackage rights on or over Union Pacific's Lockport Branch and to Union Pacific's knowledge has never operated a train on or over the Lockport Branch with or

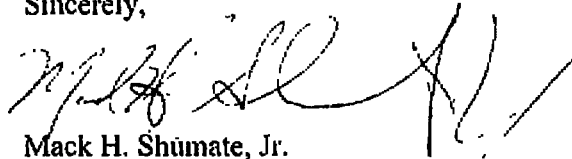
² On or about January 5, 1987 in Finance Docket No. 30958, LDRR filed a Notice of Exemption ("Notice of Exemption") for the acquisition, operation and/or lease of approximately 113.5 miles of Southern Pacific Transportation Co. ("SPT") trackage and trackage rights over an additional 91.7 miles of SPT trackage. The leased lines covered by said Notice of Exemption included the Lockport Branch. The Notice of Exemption extended to the prospective purchase of the Lockport Branch by LDRR if LDRR exercised its option to purchase the Lockport Branch. See, *Louisiana & Delta Railroad, Inc. – Acquisition, Operation, Lease and Trackage Rights – Southern Pacific Transportation Company*, Finance Docket No. 30958 (ICC served January 22, 1987) (Not printed but see 52 FR 2465, January 22, 1987.).

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without LDRR's and/or Union Pacific's permission. If BNSF does not want to pursue an offer of financial assistance, it is free to negotiate with Union Pacific for the acquisition or lease of the portion of the Lockport Branch under Union Pacific's exclusive ownership.

Neither Union Pacific nor BNSF have the right or authority to operate on the Lockport Branch during the term of the Lockport Lease. By Letter Agreement dated December 21, 2011, LDRR and Union Pacific agreed to extend all the terms of the Lockport Lease for that portion of the Lockport Branch between M.P. 0.1 and M.P. 1.7 (the "Remaining Segment") until March 31, 2012. This extension will give Union Pacific and LDRR sufficient time to negotiate mutually acceptable terms regarding LDRR's Lease of the Remaining Segment. Therefore, LDRR continues to be the sole common carrier by rail with authority to operate on that portion of the Line between M.P. 0.1 and M.P. 1.7. Neither Union Pacific nor BNSF have any right to cross the 1.7 mile Remaining Segment of LDRR's leasehold in the Remaining Segment of the Lockport Branch.

Sincerely,

A handwritten signature in black ink, appearing to read "Mack H. Shumate, Jr.", is written over a horizontal line.

Mack H. Shumate, Jr.